

Message Text

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ACTION EUR-08

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C O N F I D E N T I A L USBERLIN 0383

LIMDIS

E.O. 11652: GDS
TAGS: PGOV, AKB, BQG
SUBJECT: TWO INQUIRIES RE EXFILTRATION

REF: USBERLIN 0375

1. WE HAVE NOW REVIEWED OUR EXFILTRATION FILES AND HAVE DETERMINED THAT THE SPIEGEL INQUIRY PERTAINS TO KAI MIERENDORFF (NOT NIERENDORF), WHO WAS WELL KNOWN TO THE MISSION IN 1973 AS AN ORGANIZER OF EXFILTRATIONS CARRIED OUT BY MORE THAN A DOZEN MEMBERS OF THE U.S. FORCES STATIONED IN BERLIN. MIERENDORFF OWNED AN APARTMENT BUILDING IN BERLIN IN WHICH AMERICANS HAD BEEN LIVING AND WHICH HE USED AS A SOURCE TO RECRUIT PERSONNEL FOR HIS EXFILTRATION ACTIVITIES.

2. WE OBTAINED ENOUGH EVIDENCE ON MIERENDORFF TO CONVINCE US THAT HE WAS DEEPLY INVOLVED IN SUBORNING MEMBERS OF FORCES BY INVOLVING THEM IN EXFILTRATIONS. USBER LEGAL ADVISER ENGAGED MIERENDORFF'S GERMAN LAWYER IN PLEA BARGAINING. WE SOUGHT TO EXTRACT FROM MIERENDORFF AS MUCH EVIDENCE AS POSSIBLE ABOUT HIS ORGANIZATION SO WE COULD STOP THE ACTIVITY BY THE AMERICANS INVOLVED AND ALSO PREVENT MIERENDORFF FROM ANY FURTHER
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RECRUITING OF MEMBERS OF FORCES. ACCORDINGLY, MIERENDORFF'S LAWYER WAS REMINDED THAT MIERENDORFF WOULD BE LIABLE TO PROSECUTION UNDER SEVERAL PARTS OF ORDINANCE 511, "OFFENSES AGAINST THE INTERESTS OF THE OCCUPATION," WHICH COULD SUBJECT HIM TO SEVERAL CONVICTIONS CALLING FOR FIVE YEARS' IMPRISONMENT AND FINES OF DM 25,000. IN FACT, WE DID NOT WANT TO PROSECUTE MIERENDORFF IN THE GERMAN COURTS BECAUSE

PUBLICITY WOULD NOT BE TO OUR ADVANTAGE, AND IT WAS POSSIBLE THAT A GERMAN JURY WOULD ACQUIT HIM. IN THE PLEA BARGAINING, WE OBTAINED FROM MIERENDORFF A SIGNED STATEMENT DETAILING HIS INVOLVEMENT IN EXFILTRATION WITH MEMBERS OF THE FORCES. MR. MIERENDORFF ALSO TURNED OVER AT THAT TIME PLATES FOR PRINTING COUNTERFEIT FLAG ORDERS AND GAVE US HIS ASSURANCE THAT HE WAS MOVING AWAY FROM BERLIN AND WOULD HENCEFORTH NOT HAVE ANY CONTACT WITH MEMBERS OF THE FORCES. WE TOLD HIM THAT WE WOULD CONSIDER GIVING THE EVIDENCE WE HAD OBTAINED TO THE GERMAN AUTHORITIES FOR PROSECUTION OF HIM UNDER ALLIED LAW IF HE CONTINUED TO SEEK TO EMPLOY AMERICANS, BUT THAT IF THERE WERE NO INDICATIONS OF HIS FURTHER INVOLVEMENT WITH OUR PEOPLE FOR A YEAR WE WOULD SEE IF IT WAS POSSIBLE TO RETURN THE VANS WHICH THE MILITARY POLICE SEIZED IN 1973 WHEN AN EXFILTRATION ATTEMPT INVOLVING SEVERAL U.S. SOLDIERS WAS DISCOVERED AT CHECKPOINT ALPHA. MIERENDORFF DECIDED, OF HIS OWN FREE WILL, TO LEAVE BERLIN. WE UNDERSTAND HE PURCHASED A RESTAURANT AT THE BALTIC SEA RESORT OF SCHARBEUTZ IN THE FRG. IN HIS WRITTEN STATEMENT HE ALSO PROMISED NEVER AGAIN TO USE AMERICANS IN HIS ACTIVITIES.

3. THE FOLLOWING YEAR MIERENDORFF'S BROTHER RECEIVED A 12-YEAR JAIL SENTENCE AT A GDR EXFILTRATION SHOW TRIAL. A FEW MONTHS LATER EAST GERMAN INTELLIGENCE ALLEGED THAT KAI MIERENDORFF PLAYED A ROLE IN AN EXFILTRATION IN SEPTEMBER 1974
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IN WHICH AN AMERICAN SOLDIER WAS CAUGHT IN FLAGRANTE BY THE EAST GERMANS AND THE SOVIETS IN EAST BERLIN (MEDLEY CASE).

4. IN NOVEMBER 1974 MIERENDORFF CONTACTED THE USBER LEGAL ADVISER BY LONG-DISTANCE TELEPHONE FROM THE FRG, AND ASKED WHETHER HE COULD HAVE HIS TWO VANS BACK. THE TELEPHONE CONVERSATION WAS OBVIOUSLY TAPED. IN VIEW OF THE LIKELIHOOD THAT THE CALL WAS A DELIBERATE EFFORT BY THE GDR TO OBTAIN EMBARRASSING MATERIAL OR WAS AT LEAST BEING MONITORED, THE USBER LEGAL ADVISER SAID THE INVESTIGATION REMAINED OPEN AND THERE WAS NO CHANCE OF RECOVERING THE VOLKSWAGEN VANS. WE HAVE NOT HEARD FROM MIERENDORFF SINCE THEN, BUT WE CONTINUE TO SUSPECT THAT HE COULD BE WORKING WITH THE GDR TO ACHIEVE THE RELEASE OF HIS BROTHER IN EXCHANGE FOR AN OPPORTUNITY TO EMBARRASS US.

5. WITH RESPECT TO THE QUESTIONS POSED BY SPIEGEL IN REFTEL, WE PROPOSE TO ANSWER AS FOLLOWS:

A. THE ALLIED COMMANDANTS CAN EXPEL A GERMAN FROM BERLIN WHO IS NOT ORDINARILY RESIDENT IN BERLIN IF HIS PRESENCE IN BERLIN IS ENDANGERING THE MAINTENANCE OF PUBLIC ORDER OR THE SECURITY OF THE ALLIED FORCES OR IS

DAMAGING TO THEIR REPUTATION; NON-GERMANS MAY ALSO BE
EXPELLED (ALLIED KOMMANDATURA LAW NO. 8 DATED
APRIL 28, 1950).

B. ON AUGUST 24, 1973, MR. KAI MIERENDORFF INFORMED
US THAT HE WAS PLANNING TO LEAVE BERLIN AROUND OCTOBER 15
OF THAT YEAR AND MOVE TO THE FEDERAL REPUBLIC OF GERMANY.
IF PRESSED, WE WOULD ADD MR. MIERENDORFF WAS ENGAGED IN
ACTIVITIES INCLUDING THE UNAUTHORIZED MANUFACTURE OF
DOCUMENTS ISSUED BY THE OCCUPATION AUTHORITIES AND THE
OFFERING OF BRIBES TO MEMBERS OF THE OCCUPATION FORCES.

C. IF PRESSED, WE WOULD SAY THAT WE REGRET THE CIRCUM-
STANCES WHICH CAUSE RESIDENTS OF THE GDR TO RISK THEIR LIVES
OR TO RISK IMPRISONMENT TO LEAVE THEIR COUNTRY.
EXFILTRATION IS AN UNFORTUNATE CONSEQUENCE OF THE SITUATION
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IN THE GDR. PURSUANT TO THE PROVISIONS OF THE HELSINKI
FINAL ACT, WE STRONGLY BELIEVE IN THE RIGHT OF A PERSON
TO TRAVEL FREELY AND SPECIFICALLY TO LEAVE HIS OWN COUNTRY.
WE DEPLORE THE FACT THAT INDIVIDUALS MUST RISK BEING
TREATED AS CRIMINALS FOR ASSERTING WHAT IS A BASIC HUMAN
RIGHT. GEORGE

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